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EXAMINER

RASHID, DAVID

ART UNIT

PAPER NUMBER

2624

NOTIFICATION DATE

DELIVERY MODE

02/26/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/761,261	ITO, WATARU	
	Examiner	Art Unit	
	DAVID P. RASHID	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2009.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-18 is/are allowed.
- 6) ☒ Claim(s) 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

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Amendments & Claim Status

[1] This office action is responsive to Response to Final Action Under 37 C.F.R. § 1.116 received on Feb. 3, 2009. Claims 2-20 remain pending.

If applicant's arguments are persuasive and the examiner determines that the previous rejection should be withdrawn but that, upon further consideration, a new ground of rejection should be made, form paragraph 7.38.02 may be used. See MPEP § 706.07(a) to determine whether the Office action may be made final.

M.P.E.P. § 707.07(e).

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. § 1.97(c) with the fee set forth in 37 C.F.R. § 1.17(p)

M.P.E.P. § 706.07(a).

[2] Applicant's request for reconsideration of the finality of the rejection of the last Office action dated Nov. 4, 2008 is persuasive (see Response to Arguments below) and, therefore, the finality of that action is withdrawn.

Response to Arguments

[3] Applicant's Remarks filed Feb. 3, 2009 with respect to claims 2-20 have been respectfully and fully considered, and found persuasive.

Summary of Remarks regarding Rejections under 35. U.S.C. § 102

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In contrast, claim 19 clearly recites as follows:

an authentication unit, when said degree of similarity is higher than said predetermined value, determining whether or not said user's face-picture taken by the image pick-up unit is identical with the stored face-picture of the user by a first method, and when said degree to similarity is lower than said predetermined value, determining whether or not said user's face picture taken by the image pick-up unit is identical with the stored face picture of the user by a second method, the first method being different than the second method.

As can be seen from the claim language, the authentication unit, when the degree to similarity is higher than a predetermined value, a first method is used to determine whether the face pictures are identical. However, according to Kyle, if the face is determined to match the passport, no method is employed and it is concluded that the faces match.

Remarks at 4.

Applicant's arguments have been fully considered and are persuasive. The § 102 rejections of claims 19-20 has been withdrawn. However, upon further consideration, a new ground of § 103 rejections are made in view of *Kyle* in view of *Slocum et al.*

Summary of Remarks regarding Rejections under 35. U.S.C. § 103

However, claim 2 clearly requires

an authentication unit, when said degree of similarity is higher than said predetermined value, deciding whether or not said user's face-picture taken by the image pick-up unit is identical with the template face-picture of the user by a first method, and

when said degree to similarity is lower than said predetermined value, deciding whether or not said user's face picture taken by the image pick-up unit is identical with the template face picture of the user by a second method, the second method being different than the first method.

There is no disclosure in *Prial* that is directed to determining whether the face picture is identical by different methods. *Prial* merely performs the checks that *Kyle* performs, namely searching the watch list and then verifying identity. Neither *Prial* nor *Kyle* teach or suggest determining whether face pictures are identical by different methods depending on whether a comparison of two images are above or below a predetermined value.

Remarks at 5.

Applicant's arguments have been fully considered and are persuasive. The § 103 rejections of claims 2-18 has been withdrawn.

Claim Rejections - 35 U.S.C. § 103

[4] The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Kyle in view of Slocum et al.

[5] Claims 19-20 rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination between U.S. Pub. No. 2003/0215114 (filed May 13, 2003; hereinafter “Kyle”) in view of U.S. Patent No. 6,430,306 (issued Aug. 6, 2002, hereinafter “Slocum et al.”). Kyle priority to Prov. App. No. 60/381905 (filed May 20, 2002).

Regarding claim 19, while Kyle discloses a personal authentication apparatus (fig. 5) for authenticating a user (“user’s identity” at para.0019), comprising:

a memory (*e.g.*, fig. 7, items 15, 34) storing a face-picture (“passenger’s facial template” at para.0080 for passport matching) of the user (“user’s identity” at para.0019) therein;

an image pickup unit (fig. 4, item 22) taking a face-picture (*e.g.*, fig. 8) of said user (“user’s identity” at para.0019);

a particular person comparing unit (fig. 2, item 20; fig. 5, item 25; unit responsible for fig. 10) comparing (“Verify Face to Passport” at fig. 10) said user's face-picture (*e.g.*, fig. 8) taken by said image pickup unit (fig. 4, item 22) with a face-picture of a particular person of interest (the passport comparison is of a “particular person of interest” at the airport), wherein the stored face-picture of the user (“passenger’s facial template” at para.0080 for passport matching) is different from the stored-face-picture of the person of interest (the stored passport database used for comparison at fig. 10), outputting as comparison result a degree of similarity therebetween (“YES”, “NO” after “Does Face match Passport ?” at fig. 10), and deciding whether said degree of similarity is determined (the decision is made at fig. 10, said decision is inherently higher than a predetermined value);

a personal picture acquiring unit (fig. 2, item 20; fig. 5, item 25; unit responsible for fig. 10) for acquiring the face-picture of the user (“passenger’s facial template” at para.0080) from said memory (*e.g.*, fig. 7, items 15, 34); and

an authentication unit (fig. 2, item 20; fig. 5, item 25), when said degree of similarity is determined (the decision is made at fig. 10 above), determining whether or not a user’s face-

picture (“any person on the 'watch list’ ” at para.0087) is identical with the stored face-picture of the user (“passenger’s facial template” at para.0087) by a first method (the first method going from (“YES” ” after "Does Face match Passport ?" at fig. 10 proceeds directly to searching the watch list), and when said degree to similarity is lower (“NO” ” after "Does Face match Passport ?" at fig. 10) than said degree of similarity (the decision is made at fig. 10, said decision is inherently higher than a predetermined value), determining whether or not said user’s face picture taken by the image pick-up unit is identical with the stored face picture of the user by a second method (the second method going from (“NO” ” after "Does Face match Passport ?" at fig. 10 proceeds directly to searching against the passport again, questioning, then onward to searching the watch list), the first method being different than the second method (both methods are different), *Kyle* does not disclose wherein the user's face-picture is said user's face-picture taken by the image pick-up unit (in the authentication unit when said degree of similarity is higher than said predetermined value using said first method).

Slocum et al. teaches a user's face-picture (fig. 2, item 130) taken by an image pick-up unit (fig. 1, item 30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the user’s face-picture (“any person on the 'watch list’ ” at para.0087) of *Kyle* to be the user’s face picture taken by the image pick-up unit as taught by *Slocum et al.* “to create, maintain and use databases that store data records of individuals. In particular, the present invention provides systems and methods that are adapted to employ select facial recognition techniques to analyze a picture of a person's face. These select facial recognition techniques generate a set of values, hereinafter referred to as a "projection signal", that, as a set, are descriptive of the analyzed picture image and provide for highly compact storage of the critical identity characteristics of a person's face” *Slocum et al.* at 2:8-16.

Regarding claim 20, *Kyle* in view of *Slocum et al.* discloses wherein the first method (the first method going from (“YES” ” after "Does Face match Passport ?" at fig. 10 proceeds directly to searching the watch list) is stricter (“stricter” in the sense of less steps to finish the fig. 10 algorithm) than the second method (the second method going from (“NO” ” after "Does Face match Passport ?" at fig. 10 proceeds directly to searching against the passport again, questioning, then onward to searching the watch list).

Allowable Subject Matter

[6] Claims 2-18 allowed.

[7] The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 2, while the prior art of record teaches deciding whether or not said user's face-picture taken by the image pick-up unit is identical with the template face-picture of the user by the first and second methods, and then comparing said user's face-picture taken by said image pickup unit with the face-picture of the particular person,

the prior-art of record does not teach wherein the particular person comparing unit comparing said user's face picture taken by said image pickup unit with the face-picture of the particular person, who is categorized as of the special concern AND then deciding whether or not said user's face picture taken by the image pick-up unit is identical with the template face-picture of the user by the first and second methods (in other words, switching the comparisons of (i) the face-picture of the particular person, who is categorized as of the special concern; and (ii) the template face-picture).

Claims 3-18 allowed by dependency.

Conclusion

[8] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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[9] Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID P. RASHID whose telephone number is (571)270-1578 and fax number (571)270-2578. The examiner can normally be reached Monday - Friday 7:30 - 17:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 2624

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